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Public Disclosure Commission

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN THE MATTER OF)
ENFORCEMENT ACTION)
AGAINST)

PDC CASE NO: 01-199

Tacoma School District)
Respondent.)

PETITION FOR INTERVENTION BY
WASHINGTON EDUCATION -
ASSOCIATION POLITICAL
ACTION COMMITTEE (WEA-PAC)
(RCW 34.05.443)

RELIEF REQUESTED

COMES NOW the Washington Education Association - Political Action Committee
("WEA-PAC"), by and through its counsel, Law Office of Michael J. Gawley, and pursuant to
RCW 34.05.443, hereby moves to intervene in the above captioned enforcement action.

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I. STATEMENT OF FACTS

WEA-PAC is a voluntary association and is a person and political committee as defined by RCW 42.17.020(30) and (33), respectively. Its principal place of business is 33434 8th Ave . S. Federal Way, WA 98003. It is an unincorporated voluntary association of citizens organized to advance their shared political beliefs.

On March 23, 2001, Mr. Jamie Lund, on behalf of the Evergreen Freedom Foundation, filed a complaint with the Public Disclosure Commission ("the Commission") against the Tacoma School District, alleging that the District violated RCW 42.17.680(4) with respect to its practices regarding employee payroll authorizations executed in favor of WEA-PAC.

The Commission investigated the complaint, and thereafter on or about August 30, 2001, it issued a *Notice of Administrative Charges*, finding that the Tacoma School District violated RCW 42.17.680(4), to wit:

by failing to maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts required by RCW 42.17.680, including a copy of each employee's request for withholding wages for the purpose of making contributions to a political committee [WEA-PAC]. By redacting the names and signatures from the withholding requests provided to the EFF representative, the district failed to provide the information required by RCW 42.17.680(4).

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The Commission thereafter issued an *Amended Enforcement Hearing Notice*, noting the matter for an enforcement hearing to be held Thursday, September 27, 2001.

The authorization forms at issue herein were executed by members of WEA-PAC, and contain personal and private information regarding those members, including their names, residential addresses, residential telephone numbers, and social security numbers.

WEA-PAC, on behalf of itself and its affected members, seeks to intervene in this matter to protect the statutory and constitutional rights of its members, as the respondent Tacoma School District may lack the necessary standing, ability or motivation to do so itself.

STATEMENT OF ISSUES

Should WEA-PAC be granted leave to intervene in this matter?

EVIDENCE RELIED UPON

The evidence relied upon in support of this motion is contained in the case file of the Commission in this matter.

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AUTHORITY

A. Allowing intervention of WEA-PAC in these proceedings is appropriate as WEA-PAC qualifies as an intervenor under a provision of law, the intervention is in the interests of justice and it will not impair the orderly and prompt conduct of the proceedings.

RCW 34.05.443¹ provides in relevant part as follows:

- (1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention

¹ RCW 34.05.443 Intervention.

(1) The presiding officer may grant a petition for intervention at any time, upon determining that the petitioner qualifies as an intervenor under any provision of law and that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

(2) If a petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; and

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(3) The presiding officer shall timely grant or deny each pending petition for intervention, specifying any conditions, and briefly stating the reasons for the order. The presiding officer may modify the order at any time, stating the reasons for the modification. The presiding officer shall promptly give notice of the decision granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

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1 sought is in the interests of justice and will not impair the orderly
2 and prompt conduct of the proceedings.

3 **1. WEA-PAC Qualifies As An Intervenor Under a Provision of**
4 **Law.**

5 Intervention is favored under the law. In Washington, as in the federal courts and
6 other jurisdictions, the requirements of CR 24(a), which addresses intervention, are to be
7 liberally construed to favor intervention. *See Fritz v. Gorton*, 8 Wn. App. 658, 660, 509 P.2d
8 83 (1973). *Columbia Gorge v. Klickitat County*, 98 Wn. App. 618, 623, 989 P.2d 1260
9 (1999). Provided an intervenor has a real and identifiable interest in the subject matter of the
10 litigation; is so situated that the disposition of the action may, as practical matter, impair or
11 impede its ability to protect that interest; and, the prospective intervenor's interest may not be
12 adequately represented by the existing parties, intervention should be granted. *See* CR 24.

14 As these proceedings will directly affect vital statutory and constitutional rights of
15 both WEA-PAC and its individual members who are employed by the Tacoma School
16 District, WEA-PAC should be allowed to intervene to protect those rights. The respondent
17 Tacoma School District, as the employer, and as any party may be expected to do, may well
18 be inclined to proceed in a manner that best protects its own interests, regardless of whether
19 such a course of action is necessarily in the best interest of the affected employees.
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1 Moreover, WEA-PAC clearly has standing to appear in this action on behalf of its
2 members who would be affected by any Order issued by the Commission in this matter. An
3 association such as union has standing to bring suit on behalf of its members if it satisfies
4 three elements: (1) its members would have standing to sue in their own right; (2) the interests
5 the association seeks to protect are germane to its purpose; and (3) neither the claim asserted
6 nor the relief requested requires the participation of the individual members in the lawsuit.
7 *Int'l Ass'n of Firefighters, Local 1789, v. Spokane Airports*, 103 Wn. App. 764, 768, 14
8 P.3d 193 (2000), citing *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343, 97 S.
9 Ct. 2434, 53 L. Ed. 2d 383 (1977).
10

11
12 First, the individual members of WEA-PAC who are employed by the Tacoma School
13 District and whose deduction authorizations are at issue clearly would be able to bring an
14 action on their own behalf, challenging the release of personally identifiable private
15 information, the release of which is prohibited by RCW 42.17.310 and which would
16 infringe upon their constitutional rights to privacy and freedom of association.
17

18 Second, the purpose of WEA-PAC, as with any political committee, is to enable its
19 individual members to effectively participate in the political process by providing an effective
20 and efficient vehicle to pool and coordinate the individuals' political expression.
21 Consequently, the interests of WEA-PAC in seeking to protect its members' interests relating

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1 to their statutory and constitutional rights to privacy, and equally fundamental, their right and
2 ability to associate for political purposes with others of their choosing, free from excessive
3 governmental interference, is without question germane to its function and purpose.
4

5 Third, the issues presented herein can be heard and determined without the
6 participation of any particular affected individual, since the issues are common to all, each
7 member is affected in the same manner, and, any order resulting from the proceedings would
8 equally apply to, and affect, any particular member in the same manner as any other member.
9 Thus, participation of WEA-PAC as party is clearly appropriate.
10

11 **2. The intervention would be in the interests of justice.**

12 For much the same reasons as cited above, the interests of justice would be best served
13 by allowing WEA-PAC to participate in the proceedings, for it is WEA-PAC and its Tacoma
14 School District members who would be the persons most affected by any Order issued as a
15 result of the proceedings. The individual employees are the ones whose personal information
16 may be caused to be released in violation of RCW 42.17.310 and their constitutional rights to
17 privacy and association. Given the magnitude of the individual rights at issue, and the near
18 complete absence of motivation on the part of the employer to advocate for those rights in the
19 face of the risk of penalties for doing so, justice can, in no way, be said to be served by such a
20 result. Rather, it requires that the voice of those persons be heard.
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1 **3. Intervention will not impair the orderly and prompt conduct of the**
2 **proceedings.**

3 Finally, intervention by WEA-PAC would not impair the orderly and prompt conduct of
4 the proceedings. This is not a case involving a complex factual record, and there do not appear
5 to be material factual questions in dispute. Rather, this case addresses what are primarily legal
6 issues involving the construction and interpretation of various provisions of Chapter 42.17 RCW,
7 including the integration of provisions of the Public Disclosure Act (*originally* Initiative 276, *as*
8 *amended*) and the Fair Campaign Practices Act (*originally* Initiative 134, *as amended*), and the
9 constitutional rights of the prospective intervenor and its members. Moreover, the nature of
10 these issues and the number of other potentially similarly situated employers and employees is
11 such that the issues lend themselves to repetition.
12

13 Therefore, intervention would not result in any significant increase in the complexity of
14 any factual presentation at hearing. It would, however, increase the opportunity for reasoned
15 consideration of the complex and widely applicable legal issues involved.
16

17 **CONCLUSION**

18 For the reasons set forth above, WEA-PAC respectfully requests that it be granted
19 intervenor status in the above captioned proceedings.
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2 DATED this 21st day of September, 2001.
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MICHAEL J. GAWLEY, WSBA# 22110

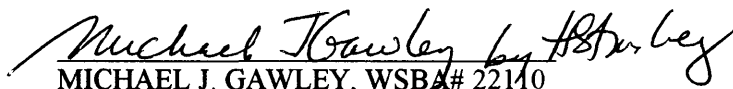
6 Attorney for prospective Intervenor

7 Washington Education Association - Political Action Committee
(WEA-PAC)

8
9
10 Attorney's Certificate of Service

11 I certify that I faxed a copy of the foregoing *Petition for Intervention* to Ms.
12 Susan Schreurs, General Counsel for Respondent Tacoma School District at
13 the facsimile number (253) 571-2550, after previously securing authorization
for acceptance of service in that manner from her.

14 DATED this 21st day of September, 2001.

15 

16 MICHAEL J. GAWLEY, WSBA# 22110

17 Attorney for prospective Intervenor

18 Washington Education Association - Political Action Committee
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